

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

ANITA LYNN DORMER, M.D.

PLAINTIFF

v.

No. 2:98cv101-D-B

MELVIN WALKER, BAPTIST MEMORIAL  
HOSPITAL-DESOTO, INC., and BAPTIST  
MEMORIAL HEALTHCARE CORPORATION

DEFENDANTS

OPINION

Before the court is the Defendants' motion for summary judgment. Upon due consideration, the court finds that the motion should be granted.

Factual Background<sup>1</sup>

The Plaintiff, Dr. Anita Dormer (Dormer), filed this action against the Defendants Baptist Memorial Hospital-Desoto (BMH-Desoto), Baptist Memorial Healthcare Corporation (BMHCC), and Melvin Walker (Walker) following her resignation from the medical staff at BMH-Desoto. Dormer's complaint includes claims against the Defendants for: 1) antitrust violations of the Sherman Act; 2) violations of Title VII; 3) breach of contract; 4) procurement of breach of contract; and 5) intentional interference in the conduct of her profession. In response to an ore tenus motion by Dormer, this court dismissed the antitrust claims in her complaint by order dated June 15, 1999.

BMH-Desoto is a private, non-profit hospital operating an acute care/physical rehabilitation facility in Southaven, Mississippi. BMHCC is the parent corporation of BMH-Desoto and is a Tennessee, non-profit organization. Defendant Walker serves as the administrator of BMH-Desoto and has held that position since 1989. Dormer is a triple-board

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<sup>1</sup> In ruling on a motion for summary judgment, the court is not to make credibility determinations, weigh evidence, or draw from the facts legitimate inferences for the movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Rather, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in her favor. Anderson, 477 U.S. at 255. The court's factual summary is so drafted.

certified physician specializing in internal medicine, pulmonary diseases, and critical care medicine.

From 1993 to 1997, Dormer worked in private practice in the Memphis, Tennessee/Desoto County, Mississippi area maintaining a private office in Southaven, Mississippi. Dormer obtained clinical privileges at several hospitals in the area including Baptist Memorial Hospital-East and Baptist Memorial Hospital-Central in Memphis, BMH-Desoto, South Panola Community Hospital in Batesville, Mississippi, and Tippah County Hospital in Ripley, Mississippi. On November 6, 1993, Dormer applied for appointment to the BMH-Desoto Active Medical Staff and for a grant of pulmonary medicine clinical privileges.<sup>2</sup> Her application was thereafter approved and Dormer was appointed to the Active Medical Staff and granted clinical privileges.

During 1995 and 1996 problems began to surface in Dormer's relationship with BMH-Desoto hospital administration. Although the Defendants charge Dormer with providing substandard care, Dormer claims that for the first time in her career she encountered a situation where competent technical assistance, adequate facilities, and appropriate medications for patients were unattainable. When faced with these problems, Dormer sought the counsel of the hospital administration, specifically Walker.

After bringing her concerns to the attention of the BMH-Desoto administration, separate investigations and reviews of Dormer's patient charts were conducted at the request of BMH-Desoto's Medical Executive Committee. Based on certain findings, the Committee imposed a summary suspension of Dormer's staff privileges. Dormer contends that her insistence upon competent care and adequate medical equipment was viewed by Walker as an affront to his abilities. According to Dormer, the investigation and review of her charts was sparked by Walker's retaliatory motive. After a subsequent hearing before the Committee, Dormer's

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<sup>2</sup> The BMH-Desoto Medical Staff is divided into six categories: (1) Active Staff; (2) Courtesy Staff; (3) Consulting Staff; (4) Senior Staff; (5) Emergency Room Staff; and (6) Affiliated Staff.

privileges were reinstated, but her relationship with Walker and other members of BMH-Desoto's administration was permanently strained. Various incidents of retaliation and hostility occurred between Dormer and BMH-Desoto's administration throughout 1996. In March 1997, Dormer resigned, citing Walker's relentless hostility and her ill treatment as the basis for her departure.

### Discussion

At the outset, the court notes that the Plaintiff has abandoned her breach of contract and procurement of breach of contract claims against the Defendants. The court, therefore, will not address those issues. Dormer's remaining Title VII claim and intentional interference with the conduct of her profession claim will be addressed in turn.

Congress enacted Title VII of the Civil Rights Act of 1964 to ensure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex, and national origin. Kremer v. Chemical Constr. Corp., 456 U.S. 461, 468, 102 S. Ct. 1883, 1890-91, 72 L. Ed. 2d 262 (1982). Specifically, the Act provides that:

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. . .

42 U.S.C. § 2000e-2(a)(1).

The Fifth Circuit has made clear that a Title VII claim must necessarily involve an employment relationship. See Broussard v. L.H. Bossier, Inc., 789 F.2d 1158, 1159 (5<sup>th</sup> Cir. 1986). In determining whether a plaintiff is an employee for Title VII purposes, the Fifth Circuit utilizes the hybrid economic realities/common law control test. Id. at 1160. Under this test, a district court should consider the economic realities of the work relationship, and the extent to which the one for whom the work is being done has the right to control the details and means by which the work is to be performed, with emphasis on the control factor. Mares v. Marsh, 777

F.2d 1066, 1067 (5<sup>th</sup> Cir. 1985). Thus, if an employee-employer relationship existed between Dormer and BMH-Desoto, then clearly Dormer would have standing to bring a claim under Title VII. The question here, then, is whether Dormer's relationship with BMH-Desoto was one of employee or independent contractor.

In determining Dormer's status, the court is guided by the Fifth Circuit's decision in Diggs v. Harris Hospital-Methodist, Inc., 847 F.2d 270 (5<sup>th</sup> Cir. 1988). The Diggs court addressed whether a Title VII employee-employer relationship existed between a physician and the hospital providing the physician with staff privileges. In applying the economic realities/common law control test, the court utilized the following factors in determining whether an employee-employer relationship exists for Title VII purposes:

- (1) the kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision;
- (2) the skill required in the particular occupation;
- (3) whether the "employer" or the individual in question furnishes the equipment used and the place of work;
- (4) the length of time during which the individual has worked;
- (5) the method of payment, whether by time or by the job;
- (6) the manner in which the work relationship is terminated; i.e., by one or both parties, with or without notice and explanation;
- (7) whether annual leave is afforded;
- (8) whether the work is an integral part of the business of the "employer;"
- (9) whether the worker accumulates retirement benefits;
- (10) whether the "employer" pays social security taxes; and
- (11) the intention of the parties.

Diggs, 847 F.2d at 273 (citing Broussard, 789 F.2d at 1160)(quoting Spirides v. Reinhardt, 613 F.2d 826, 832 (D.C. Cir. 1979)).

While Dormer does depend upon having hospital staff privileges in order to pursue her medical practice, she has failed to establish that privileges at BMH-Desoto were necessary to her practice or that denial of staff privileges at BMH-Desoto hampered her ability to obtain privileges at any other hospital. This court's focus, however, rests more on the control factor. Although BMH-Desoto supplied the tools, staff, and equipment utilized by Dormer in delivering medical care at the hospital, and BMH-Desoto imposed standards upon those permitted to hold

staff privileges, the hospital did not direct the manner or means by which Dormer rendered medical care. Dormer independently admitted her patients, diagnosed their conditions, and determined the appropriate manner and means of treatment. In addition, Dormer was under no duty to admit any of her patients to BMH-Desoto, and she treated her patients at the hospital without direct supervision. BMH-Desoto did not provide a salary or wages to Dormer or any other physicians with staff privileges, nor did it pay her licensing fees, professional dues, insurances, taxes, or retirement benefits. Furthermore, Dormer had staff privileges at several other North Mississippi and Memphis area hospitals during the time she was on BMH-Desoto's staff.

Dormer contends that BMH-Desoto exercised a heightened degree of control over the exercise of her duties, specifically when the Medical Executive Committee imposed certain restrictions after her summary suspension. As explained in Diggs, however, "control" means that the employer has the "right to control the details and means by which the work is to be performed." Diggs, 874 F.2d at 272. The BMH-Desoto Medical Executive Committee imposed restrictions on Dormer in February 1997, and Dormer submitted her resignation in March 1997. Based on the facts presented, the court finds that BMH-Desoto's decision to impose restrictions on Dormer's staff privileges in order to enforce the standards it imposed on all physicians holding staff privileges fails to establish the "control" necessary to create an employment relationship, and that such a brief period of time cannot sustain Dormer's assertion that BMH-Desoto controlled the details and means by which her work was performed.

Although the Plaintiff invites the court to broaden the scope of Title VII to protect female physicians facing an era of HMO's and a competitive atmosphere in the healthcare industry, the court must respectfully decline. Under the above principles, the court concludes that the Plaintiff has failed to establish any connection between BMH-Desoto's alleged actions and an employment relationship involving Dormer. Accordingly, her claim shall be dismissed.

Having dismissed the claim over which it has original jurisdiction, the court declines to

exercise supplemental jurisdiction over the Plaintiff's state law claim. See 28 U.S.C. § 1367.

Therefore, the court shall dismiss the Plaintiff's state law claim without prejudice.

A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_\_ day of January 2000.

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United States District Judge

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ORDER

Pursuant to an opinion issued this day, it is hereby ORDERED that:

- (1) Defendants' Motion for Summary Judgment (Docket # 38) is GRANTED;
- (2) Plaintiff's state law claims are DISMISSED without prejudice; and
- (3) this case is CLOSED.

All memoranda, depositions, declarations, and other materials considered by the court in ruling on this motion are hereby incorporated into and made a part of the record in this action.

SO ORDERED, this the \_\_\_\_\_ day of January 2000.

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United States District Judge